IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2973 OF 2004

Kothari & Mehta .....Petitioner

VERSUS

Union of India & Ors. .....

Respondents.

Mr. H.R. Shetty for the Petitioner

Mr. Suresh Kumar with Mr. Y.R. Bhate for Respondent Nos. 1 & 3.

CORAM: DALVEER BHANDARI, C.J., & DR.D.Y.CHANDRACHUD, J.

DATE: NOVEMBER 4, 2004.

P.C.:-

The petitioner is aggrieved by the order dated 30th July, 2004 passed by the Appellate Tribunal for Foreign Exchange, New Delhi ('Tribunal', for short).

The Tribunal proceeded on the basis that the sum involved in this contravention is Rs.12,88,980/-, and the amount of penalty, according to the Tribunal, should at least be equal to the figure, and it imposed penalty of Rs.13,00,000/-. This order was passed by the Assistant Director of Enforcement. Against that order, the petitioner has filed appeal before the Tribunal. The Tribunal waived the major portion of penalty amount of pre-deposit, and directed the petitioner to pay 10% of the penalty, i.e., Rs.1,30,000/-.

The learned counsel for the petitioner has drawn our attention to Exhibit “G”, Bill of Entry for Warehousing, Exchange Control Copy. According to it, the total assessable value is Rs.3,29,063/-.

The learned counsel for the petitioner submits that the Tribunal proceeded on the basis that the total amount payable by the petitioner was Rs.12 lakhs and odd, therefore directed the petitioner to pay the penalty at 10%, totalling Rs.1,30,000/-. In case the amount itself is Rs.3,29,063/-, the penalty amount should

be in the vicinity of about Rs.32,000/-.

In the facts and circumstances of the case, we deem it appropriate to set aside the impugned order and remand the matter to the Tribunal for re-hearing. The parties would be at liberty to file all documents within one week before the Tribunal. The Tribunal will consider the same and will pass an order afresh, after hearing the parties. No further directions are necessary. This petition is accordingly disposed of.

CHIEF JUSTICE

DR.D.Y.CHANDRACHUD, J.